



# California Regional Water Quality Control Board San Diego Region



*RS*

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Secretary for  
Environmental Protection

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<http://www.waterboards.ca.gov/sandiego>

May 20, 2008

CERTIFIED-RETURN RECEIPT REQUESTED  
7007 3020 0001 0040 7287

Mr. J. Michael Sowinski, Jr., Esq.  
Opper and Varco LLP  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, California 92101-5005

In reply refer to: CA:14-1411:fmelbourn

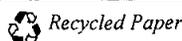
Dear Mr. Opper:

**AMENDED COMPLAINT NO. R9-2008-0019 FOR ADMINISTRATIVE CIVIL LIABILITY FOR MANDATORY MINIMUM PENALTIES UNDER WATER CODE SECTION 13385, VIOLATION OF ORDER NO. R9-2000-0090, NPDES NO. CAG919001  
501 First Street, Coronado, California**

Enclosed is Amended Complaint No. R9-2008-0019, Administrative Civil Liability with Mandatory Minimum Penalties (MMPs) to William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc. for groundwater discharges from 501 First Street, Coronado, California. The Amended Complaint recommends that the Regional Board impose a civil liability of \$24,000 for violations of effluent limitations established by Order No. R9-2000-0090, NPDES No. CAG919001, *General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. The original Complaint issued on March 14, 2008, recommended the imposition of a \$45,000 liability. The Complaint was amended to remove seven of the eight alleged six-month median violations after review of your April 21, 2008, letter. The seven alleged violations were calculated without 180 days of sample characterized discharge. The last remaining alleged six-month median violation was calculated and supported with 180 days of sample characterized discharge, and clearly exceeded the Permit's discharge limitation. At this point, no other reduction in the number of alleged violations is warranted.

Since the Complaint has been amended, the Regional Board has established new deadlines. If your clients intend to waive their right to a hearing before the Regional Board, you or your clients must sign and return the enclosed waiver form with a \$24,000 cashier's check made out to the "State Water Resources Control Board," by 5:00 p.m. **Thursday, June 19, 2008**. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Amended Complaint and acceptance of the assessment of civil liability in the amount of \$24,000. In addition, you must publish the enclosed public notice in the San Diego Union-Tribune newspaper no later than

*California Environmental Protection Agency*



Mr. J. Michael Sowinski, Jr., Esq.      - 2 -  
501 First Street, Coronado, CA  
Amended Complaint for MMPs No. R9-2008-0019

May 20, 2008

**June 16, 2008.** Verification that the notice has been published must be submitted to the Regional Board no later than **June 26, 2008.**

**Public Hearing**

If your clients do not elect to waive their right to a public hearing, or verification that the newspaper notification has not been received by May 13, 2008, a hearing is tentatively scheduled to be held at the Regional Board meeting on **August 13, 2008.** In order for the Regional Board to fully consider any argument on your clients' behalf, you should submit twenty copies of all documents, including exhibits you intend to provide the Regional Board by 5:00 p.m. **Thursday, July 14, 2008.** Copies of material submitted will be forwarded to the Regional Board Members. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "in reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Please contact Frank Melbourn at (858) 467-2973 or via e-mail at [fmelbourn@waterboards.ca.gov](mailto:fmelbourn@waterboards.ca.gov) if you have any questions concerning this matter.

Respectfully,



Michael P. McCann  
Assistant Executive Officer

MPM:mja:ftm

- Enclosures: 1. Amended Complaint No. R9-2008-0019  
2. Waiver of Public Hearing Form  
3. Public Hearing Notice

Copies with enclosures to:

1. Ken Greenberg, U.S. EPA, Region 9, [greenberg.ken@epa.gov](mailto:greenberg.ken@epa.gov)
2. Eileen Maher, San Diego Unified Port District, [emaher@portofsandiego.org](mailto:emaher@portofsandiego.org)

Regulatory Measure ID: 342499

RK

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

IN THE MATTER OF:

WILLIAM AND HEIDI DICKERSON, AND )  
PERRY & PAPENHAUSEN )  
CONSTRUCTION, INC. )  
)  
VIOLATIONS OF EFFLUENT LIMITATIONS )  
IN ORDER NO. 2000-90, NPDES NO. )  
CAG919001, GENERAL WASTE )  
DISCHARGE REQUIREMENTS FOR )  
TEMPORARY GROUNDWATER )  
EXTRACTION AND SIMILAR WASTE )  
DISCHARGES TO SAN DIEGO BAY AND )  
STORM DRAINS OR OTHER )  
CONVEYANCE SYSTEMS TRIBUTARY )  
THERETO )  
)  
501 FIRST STREET, CORONADO, CA )  
WDID NO. 9 000001411 )

AMENDED COMPLAINT  
NO. R9-2008-0019  
FOR  
ADMINISTRATIVE CIVIL LIABILITY  
WITH  
MANDATORY MINIMUM PENALTIES

May 20, 2008

**WILLIAM AND HEIDI DICKERSON, AND PERRY & PAPENHAUSEN  
CONSTRUCTION, INC. ARE HEREBY GIVEN NOTICE THAT:**

1. William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc. (hereinafter Dischargers) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to Water Code section 13385. The violations alleged herein include violations of effluent limitations prescribed by waste discharge requirements for discharges of pollutants from point sources to navigable waters. The Regional Board must impose mandatory minimum penalties (MMPs) for the violations alleged in this complaint.
2. On September 8, 2005, the Dischargers submitted a signed certification and permit application to the Regional Board to discharge extracted and treated groundwater from their single family residential home construction site to San Diego Bay pursuant Order No. R9-2000-90, NPDES Permit No. CAG919001, *General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto* (Dewatering Permit).
3. On June 22, 2006, the Regional Board enrolled the Dischargers under the Dewatering Permit subject to its numeric effluent limitations and established a groundwater discharge limitation of 500,000 gallons per day.

4. The Water Code includes provisions for MMPs for serious and chronic violations of waste discharge requirements applying to surface water discharges. (Wat. Code, § 13385, subds. (h) & (i).)
5. Each serious violation defined as an exceedance of an effluent limitation for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations (CFR) by 40 percent or more, or for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the (CFR), by 20 percent or more, is subject to a \$3,000 MMP. Furthermore, the occurrence of four or more chronic violations, defined as any effluent limitation violation, in any six-month period triggers the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during the six-month period.
6. The Dischargers reported effluent sampling results to the Regional Board pursuant to the Dewatering Permit's Monitoring and Reporting schedule. See Table 1, Summary of Reported Results (attached).

#### **ALLEGATIONS**

8. The Dischargers reported to the Regional Board sampling results from July 2006 (discharge initiation) until February 2007 (discharge cessation). See attached laboratory results. The Regional Board used these results to calculate the six-month median for copper. See Table 2, Calculation of 6-Month Median for Copper (attached). The Regional Board incorporated these results in determining the total number of MMPs. See Table 3, Summary of Effluent Violations (attached).
9. Under subdivisions (h) and (i) of Section 13385 of the Water Code, the Regional Board must impose MMPs of \$24,000 for the alleged violations of effluent limitations, as determined by the following:
  - a. For September 7, 2006, the reported concentration of copper in monitoring reports submitted by the Dischargers was 6.35 ug/L exceeding the instantaneous maximum effluent limitation for copper of 4.8 ug/L. The reported result exceeds the effluent limit by greater than 20%; therefore this is a serious violation and satisfies the MMP requirements.
  - b. For October 18, 2006, the reported concentration of copper in monitoring reports submitted by the Dischargers was 116.00 ug/L exceeding the instantaneous maximum effluent limitation for copper of 4.8 ug/L. The

reported result exceeds the effluent limitation by greater than 20%; therefore this is a serious violation and satisfies the MMP requirements.

- c. For December 1, 2006, the concentration of copper reported by the Dischargers was 13.50 ug/L exceeding the instantaneous maximum effluent limitation for copper at 4.8 ug/L. The result exceeds the effluent limitation by greater than 20%; therefore this is a serious violation and satisfies the MMP requirements.
- d. For December 12, 2006, the concentration of copper reported by the Dischargers was 6.06 ug/L exceeding the instantaneous maximum effluent limitation for copper at 4.8 ug/L. The result exceeds the effluent limitation by greater than 20%; therefore this is a serious violation and satisfies the MMP requirements.
- e. For December 19, 2006, the concentration of copper reported by the Dischargers was 11.20 ug/L exceeding the instantaneous maximum effluent limitation for copper of 4.8 ug/L. The result exceeds the effluent limitation by greater than 20%; therefore this is a serious violation and satisfies the MMP requirements.
- f. For January 9, 2007, the concentration of copper reported by the Dischargers was 5.66 ug/L exceeding the instantaneous maximum effluent limitation for copper at 4.8 ug/L. Although the result did not exceed the limitation by greater than 20%; the violation was at least the fourth effluent violation in a six-month period and therefore triggers the mandatory assessment of a \$3,000 penalty.
- g. For February 6, 2007, the concentration of copper reported by the Dischargers was 5.69 ug/L exceeding the instantaneous maximum effluent limitation for copper at 4.8 ug/L. Although the result did not exceed the limitation by greater than 20%; the violation was at least the fourth effluent violation in a six-month period and therefore triggers the mandatory assessment of a \$3,000 penalty.
- h. For February 6, 2007, based upon submitted results the six month median concentration for copper was 6.35 ug/L, exceeding the copper effluent limitation at 3.1 ug/L. The violation is a serious violation because it violates the limitation by more than 20%, and therefore satisfies the MMP requirements.

PK

PROPOSED CIVIL LIABILITY

10. Pursuant to sections 13385 (h) and (i) of the Water Code, the Regional Board must impose mandatory minimum penalties in the amount of twenty-four thousand dollars (\$24,000) (\$3,000 for each of eight serious and chronic violations) on William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc.

Discretionary civil liability above the mandatory minimum for the violations alleged in this Complaint is not recommended.

Dated this 20<sup>th</sup> day of May 2008.



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MICHAEL P. McCANN  
Assistant Executive Officer

Signed pursuant to the Authority  
delegated by the Executive Officer  
to the Assistant Executive Officer

CIWQS Entries

Party IDs: 339977, 330741

Place ID: 640111

Regulatory Measure ID: 342499

Violation IDs: 458911, 458912, 737060, 522801, 737119, 522803, 522804, 737117

ACL Amended Complaint for MMP  
R9-2008-0019

Violation Date	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value
8/9/2006	Copper	instantaneous maximum	ug/L	4.8	ND
9/7/2006	Copper	instantaneous maximum	ug/L	4.8	6.35
10/18/2006	Copper	instantaneous maximum	ug/L	4.8	116.00
10/30/2006	Copper	instantaneous maximum	ug/L	4.8	ND
12/1/2006	Copper	instantaneous maximum	ug/L	4.8	13.50
12/12/2006	Copper	instantaneous maximum	ug/L	4.8	6.06
12/19/2006	Copper	instantaneous maximum	ug/L	4.8	11.20
1/9/2007	Copper	instantaneous maximum	ug/L	4.8	5.66
2/6/2007	Copper	instantaneous maximum	ug/L	4.8	5.69

ND = Non-Detect

The Reporting Limit (RL) for the copper analysis was 5 ug/L

Table 1. Summary of Reported Results

**Dickerson Residence**  
**501 First St., Coronado, CA**  
**6-month Median for Copper**  
**General Dewatering Permit R9-2000-0090**

Date	Reported Copper Value (ug/L)	6-month (180-days) median (ug/L)	Violation >3.1 ug/L
8/9/2006	ND	N/A	N/A
9/7/2006	6.35	N/A	N/A
10/18/2006	116.00	N/A	N/A
10/30/2006	ND	N/A	N/A
12/1/2006	13.50	N/A	N/A
12/12/2006	6.06	N/A	N/A
12/19/2006	11.20	N/A	N/A
1/9/2007	5.66	N/A	N/A
2/6/2007	5.69	6.06	Yes

Date discharge began: 7 JUL 2006.  
 180 days from 9 AUG 2006 (first copper sample collection result) is 5 FEB 2007.  
 Non-Detects are not used in the calculation of the median.  
 6-month median limit = 3.1 ug/L

Table 2. Calculation of 6-Month Median for Copper  
 ACL Amended Complaint for MMP R9-2008-0019

RR

Amended Complaint No. R9-2008-0019  
 Dickerson Residence  
 501 First St., Coronado, CA

Violation Date	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value*	Serious Violation	Mandatory Minimum Penalty
9/7/2006	Copper	instantaneous max.	ug/L	4.8	6.35	Yes	\$3,000
10/18/2006	Copper	instantaneous max.	ug/L	4.8	116.00	Yes	\$3,000
12/1/2006	Copper	instantaneous max.	ug/L	4.8	13.50	Yes	\$3,000
12/12/2006	Copper	instantaneous max.	ug/L	4.8	6.06	Yes	\$3,000
12/19/2006	Copper	instantaneous max.	ug/L	4.8	11.20	Yes	\$3,000
1/9/2007	Copper	instantaneous max.	ug/L	4.8	5.66	No	\$3,000
2/6/2007	Copper	instantaneous max.	ug/L	4.8	5.69	No	\$3,000
2/6/2007	Copper	6-month median	ug/L	3.1	6.06	Yes	\$3,000
<b>TOTAL PENALTY</b>							<b>\$24,000</b>

\*6-month median values were not reported by the Dischargers. The Regional Board calculated the 6-month median using the Discharger's reported instantaneous values as shown in Table 2.

Copper is a Group II Pollutant

Table 3. Summary of Effluent Violations

RF



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Diego Region

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Arnold Schwarzenegger  
Governor

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(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

### WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Richard Opper, Esq.  
Opper and Varco LLP  
Representing: William and Heidi Dickerson,  
and Perry & Papenhausen Construction, Inc.  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, California 92101-5005

Amended Complaint  
No. R9-2008-0019  
for  
Administrative Civil Liability  
With  
Mandatory Minimum Penalties

**\$24,000**

WDID No. 9 000001411  
501 First Street, Coronado, California

By signing below, I agree to waive William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc.'s right to a public hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violations alleged in the above referenced Complaint and to remit payment for the imposed civil liability. I understand that I am authorized to give up William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc.'s right to be heard and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the proposed civil liability. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the imposed civil liability.

\_\_\_\_\_  
Signature Title Date

\_\_\_\_\_  
Print your name

Send this signed form to:  
Michael P. McCann, Assistant Executive Officer  
C/O Compliance Assurance  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

*California Environmental Protection Agency*

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NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region  
Issuance of Administrative Civil Liability (ACL) Order  
With Mandatory Minimum Penalties against  
William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc.  
501 First Street, Coronado, California**

On May 20, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Amended Complaint No. R9-2008-0019 to William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc. in the amount of \$24,000 for alleged violations of Regional Board Order No. R9-2000-0090, NPDES Permit No. CAG919001 *Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. William and Heidi Dickerson, and Perry & Papenhausen Construction, Inc. have elected to waive their right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$24,000 as set forth in the Complaint. The Regional Board will consider accepting the waiver at its August 13, 2008, meeting.

Written comments regarding the allegations contained in Amended Complaint No. R9-2008-0019, and/or acceptance of the waiver, will be accepted through Monday, July 14, 2008.

The Regional Board's August 13, 2008, meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please call Frank Melbourn at (858) 467-2952 or visit the Regional Board's web site at [www.waterboards.ca.gov/sandiego/](http://www.waterboards.ca.gov/sandiego/)

Michael P. McCann  
Assistant Executive Officer

RF

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1. Article Addressed to:

Mr. J. Michael Sawinski  
 225 Broadway 19th Floor  
 San Diego, CA 92101-5003

2. Article Number

7007 3020 0001 0040 7287

(Transfer from service)

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Addressee

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 Street, Apt. No. or PO Box No. 225 Broadway 19th Floor  
 City, State, ZIP+4 SAN DIEGO, CA 92101

PS Form 3800, August 2006

See Reverse for Instructions